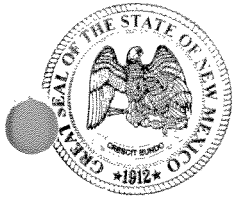


NEW MEXICO COMMISSION FOR THE BLIND

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STRUCTURE OF COMMISSION FOR THE BLIND WITHIN STATE GOVERNMENT

SUMMARY OF ISSUES

1. The Commission for the Blind implements federal programs, distinguishing the Commission for the Blind from agencies such as the Governor's Commission on Disability (GCD) or the Commission for Deaf and Hard of Hearing (CDHH).
2. The Commission is subject to federal matching and Maintenance of Effort (MOE) requirements that restricts or prohibits cuts in Commission funds, and that restricts or prohibits use of Commission funds or resources by other agencies.
3. There are strict and complex federal regulations regarding how Commission funds can be spent, mandating that funds not be spent for purposes other than the specific federal program, and imposing a reduction in Federal funds should Commission funds or resources be spent or used inappropriately.
4. There are strict and complex federal regulations regarding how vocational rehabilitation services for persons who are blind must be provided.
5. There are strict and complex federal regulations regarding how agencies for the blind must be configured within state government.
6. The Commission is presently configured in what the organized blind community considers to be the best structure for delivering services to persons who are blind or visually impaired.
7. The consolidation or merging of agencies has the potential to create a "checkerboard" system, making efficient operation more difficult. This could conflict with federal regulations at 34 CFR 361.12 which "...require proper and efficient administration..."

DETAIL DESCRIPTION OF ISSUES

Commission for the Blind Performance

The vocational rehabilitation program operated by the Commission for the Blind consistently receives top rankings from the U.S. Department of Education for helping blind persons to find quality jobs. The U.S. Department of Education has three "primary" indicators. The Commission ranked first in all three primary indicators, including the comparison of the average starting wage of consumers to the average state wage.

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Consumers of the Commission start earning 87.5% of the average state wage, the highest level in the nation.

Specialization

The provision of service to persons who are blind is a highly specialized field, and the employees who work for the Commission for the Blind possess specialized skills and ability. For example, the teaching of Braille, orientation & mobility, and assistive technology all require unique sets of skills. In addition, the Commission for the Blind must operate under the federal "comprehensive system of personnel development," or CSPD. This means that the vocational rehabilitation counselors must possess specific degrees and certification. Other staff receive specialized training related to their work with persons who are blind. In addition, Commission employees must be able to comply with the very complex federal requirements with respect to match, maintenance of effort, carryover and reporting requirements; numerous OMB Circulars; and many program regulations. The federal requirements are so specialized that the Commission must maintain fiscal staff who are highly trained and knowledgeable with respect to the federal requirements. It is absolutely essential that these employees work exclusively on the federal requirements, and that great care be taken to assure proper training and succession planning.

Best Practice

Research has shown that separate agencies serve blind persons more economically and effectively than other organizational structures and approaches. The most significant study documenting this conclusion was conducted by the Mississippi State University Rehabilitation Research and Training Center on Blindness and Low Vision.

Consumer Organization Support

There are two primary "consumer organizations" comprised of persons who are blind. These are the National Federation of the Blind (NFB), and the American Council of the Blind (ACB). The NFB long advocated for the creation of the Commission for the Blind, becoming successful in 1986 with the passage of the Commission for the Blind Act. Although the NFB and ACB have philosophical differences, they are adamant in their support of separate agencies for blind persons. In 2010, both organizations passed resolutions strongly opposing any effort that would consolidate or merge the Commission for the Blind.

Federal Law and Mandate

The Commission for the Blind has a federal mission, which distinguishes the Commission for the Blind from the Commission for Deaf and Hard of Hearing (CDHH), and from the Governor's Commission on Disability (GCD). The Commission for the Blind operates pursuant to the federal Rehabilitation Act, 29 U.S.C. § 701, and 34 CFR 361. Accordingly, the Commission for the Blind receives federal funds that must be

administered pursuant to federal law. This is not the case with the CDHH or GCD. While the Developmental Disabilities Planning Council (DDPC) receives federal funds and has a federal mandate under the Developmental Disabilities Act, that mandate is totally different from that of the Commission for the Blind.

Federal Funding Rules

Because state funds that are used to match federal funds must be spent in accord with federal law and regulations, these funds cannot be used to support any of the functions of the CDHH, GCD, or DDPC. To do so would make those state funds ineligible for federal match which would subject the state to a Maintenance of Effort (MOE) penalty. Basically, the MOE requirement is that the Commission for the Blind must not spend less in non-federal funds on the vocational rehabilitation program in the current federal fiscal year than what was spent in non-federal funds for the VR program in the federal fiscal year that is two years prior to the current federal fiscal year.

The Commission for the Blind must spend funds in compliance with 29 U.S.C. § 701 et seq., 34 CFR 361, as well as in compliance with the Education Department General Administrative Regulations (EDGAR). The Commission for the Blind matches federal funds at 78.7% federal to 21.3% state funds for the Vocational Rehabilitation program, at 90% federal funds to 10% state funds for the Independent Living/Older Blind program, at 90% federal to 10% state funds for the Training Grant, and 100% federal funds for the Supported Employment grant.

Conflict of Laws

Any consolidation would be problematic given the fact that the Commission for the Blind administers federal laws that could create significant conflicts in a consolidated or merged agency. For example, the federal Rehabilitation Act sets out very specific parameters with respect to how a blind vocational rehabilitation program must be configured when it is housed within another agency. Under federal regulations at 34 CFR 361.13, if vocational rehabilitation services for blind persons are housed within a combined agency that included CDHH, GCD, or the DDPC, it would need to include a separate "vocational rehabilitation bureau, division, or unit" for providing such services to individuals who are blind. It would also need to have a "full-time director," and a "staff, at least 90 percent of whom are employed full time on the rehabilitation work of the organizational unit." Furthermore, the state funds that would be used to pay for the 10% of staff time that might be spent on activities unrelated to vocational rehabilitation would have to be paid for with 100% state funds, and could not be eligible for federal match. To do so would make those state funds ineligible for federal match, which would subject the state to a MOE penalty, and a potential payback of federal funds through a Notice of a Disallowance Decision.

The Commission for the Blind also administers the federal Randolph-Sheppard Act, 20 U.S.C. § 107 et seq., which gives blind persons a preference in the vending of food on federal property. The Commission also administers a companion state law, which is at

22-14-24 NMSA 1978. These laws require the Commission to give a priority to blind persons with respect to vending opportunities, and to actively seek out vending opportunities on behalf of blind persons. In addition, the Commission administers Ability-One, 41 U.S.C. § 46 et seq, which gives blind persons a preference with respect to certain types of federal contracts, and that requires that 75% of the workforce working on those contracts be persons who are blind.

Checkerboard Issues

The consolidation or merging of agencies has the potential to create a "checkerboard" system, making efficient operation more difficult. For example, persons who are blind would be legally entitled under federal law to services that would not be available to persons with other disabilities who go to different divisions within a combined or merged department. For example, a blind person who is seeking a job could receive a computer, assistance with tuition, and many other very tangible items of assistance that will not be available to persons who go to the other divisions. Furthermore, the employees working for the blind division will need to have greater skills and levels of education, which will mean that they receive greater compensation. Because of its status as a separate state agency, the Commission for the Blind is better positioned to receive referrals, including from the general public, school systems, physicians, ophthalmologists, optometrists, and senior centers. In addition, the consolidation or merging of agencies might create issues under the Public Employee Bargaining Act (PEBA). At present, some agencies have a contract with AFSME, others have a contract with CWA, and others do not have a union contract. Employees of the Commission for the Blind who are bargaining unit members are represented by CWA. This could all potentially conflict with federal regulations at 34 CFR 361.12 which "...require proper and efficient administration..."